

NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Donnell Thomas,

Plaintiff,

v.

Wexford Medical, *et al.*,

Defendants.

No. CV-15-00394-PHX-JJT

ORDER

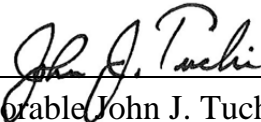
At issue is Magistrate Judge James F. Metcalf's Report and Recommendation (R&R) in this matter filed September 30, 2015 (Doc. 59). The R&R recommends that the Court dismiss without prejudice Plaintiff Donnell Thomas's civil rights complaint for failure to prosecute. The R&R clearly advised Plaintiff that he had fourteen days from the date of service of a copy of the R&R to file any specific written objections. Fed. R. Civ. Pr. 72. Plaintiff filed no objections, and the time to do so is now long past. Plaintiff has therefore waived his right to *de novo* consideration of the issues per *United States v. Rayna-Tapia*, 328 F.3d 1141, 1121 (9th Cir. 2003)(*en banc*), and the Court may adopt the R&R based on the waiver. Nonetheless, the Court has conducted a review on the merits of the issues involved. It finds that Magistrate Judge Metcalf's reasoning and analysis are correctly applied to the procedural situation.

Pursuant to Plaintiff's motion, the Court directed the Clerk to enter default against the remaining Defendant in this matter, and expressly gave Plaintiff fourteen days to move for default judgment against her. (Doc. 55). Plaintiff allowed the deadline to pass

1 without so filing for default judgment. The court nonetheless gave Plaintiff an additional
2 chance, issuing on September 9, 2015 an Order to Show Cause why the case should not
3 be dismissed for failure to prosecute and giving Plaintiff fourteen days to show such
4 cause. (Doc. 57). Plaintiff failed to comply with the order. This matter is therefore ripe
5 for dismissal. The Court agrees with Judge Metcalf's analysis that dismissal should be
6 without prejudice.

7 IT IS ORDERED dismissing without prejudice Plaintiff's cause of action in this
8 matter and instructing the Clerk to close the matter.

9 Dated this 30th day of November, 2015.

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Honorable John J. Tuchi
United States District Judge
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